

Decision 15-04-015 April 9, 2015

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Consider
Smart Grid Technologies Pursuant to Federal
Legislation and on the Commission's own
Motion to Actively Guide Policy in California's
Development of a Smart Grid System.

Rulemaking 08-12-009
(Filed December 18, 2008)

**DECISION GRANTING COMPENSATION TO THE UTILITY REFORM NETWORK FOR
SUBSTANTIAL CONTRIBUTION TO DECISION 14-05-016**

Claimant: The Utility Reform Network (TURN)	For contribution to Decision (D.) 14-05-016
Claimed: \$48,842.46	Awarded: \$44,077.46 (reduced 9.8%)
Assigned Commissioner: Michael Picker	Assigned ALJ: ALJ Division¹

PART I: PROCEDURAL ISSUES

A. Brief Description of Decision:	D.14-05-016 adopted rules to provide access to energy usage and usage-related data to local entities, researchers and state/federal agencies when such access is consistent with laws and procedures that protect the privacy of customer data.
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**B. Claimant must satisfy intervenor compensation requirements set forth in Pub. Util.
Code §§ 1801-1812:**

	Claimant	CPUC Verified
Timely filing of notice of intent to claim compensation (NOI) (§ 1804(a)):		
1. Date of Prehearing Conference:	n/a	N/A
2. Other Specified Date for NOI:	12/31/12 for new NOIs	
3. Date NOI Filed:	4/29/09 (see comment #1)	Verified
4. Was the NOI timely filed?		

¹ This proceeding was originally assigned to ALJ Timothy J. Sullivan.

Showing of customer or customer-related status (§ 1802(b)):		
5. Based on ALJ ruling issued in proceeding number:	R.08-12-009	Verified
6. Date of ALJ ruling:	5/13/09	Verified
7. Based on another CPUC determination (specify):		
8. Has the Claimant demonstrated customer or customer-related status?		Yes
Showing of “significant financial hardship” (§ 1802(g)):		
9. Based on ALJ ruling issued in proceeding number:	R.08-12-009	Verified
10. Date of ALJ ruling:	5/13/09	Verified
11. Based on another CPUC determination (specify):		
12. Has the Claimant demonstrated significant financial hardship?		Yes
Timely request for compensation (§ 1804(c)):		
13. Identify Final Decision:	D.14-05-016	Verified
14. Date of Issuance of Final Order or Decision:	5/5/14	Verified
15. File date of compensation request:	6/25/14	Verified
16. Was the request for compensation timely?		Yes

C. Additional Comments on Part I:

#	Intervenor’s Comment(s)	CPUC Discussion
1.	The ACR 11/13/12 held that “Consistent with Rule 17.2, parties that were found eligible for an award of compensation previously in this proceeding remain eligible for an award in this new phase of the proceeding without a new demonstration of eligibility.” TURN filed its NOI on 4/29/09. In an ALJ Ruling on 5/13/09 TURN’s NOI was granted including meeting the eligibility requirements relating to being a customer and establishing significant financial hardship.	The Commission accepts this assertion.

PART II: SUBSTANTIAL CONTRIBUTION

A. In the fields below, describe in a concise manner Claimant's contribution to the final decision (see § 1802(i), § 1803(a) & D.98-04-059).

Intervenor's Claimed Contribution(s)	Specific References to Intervenor's Claimed Contribution(s)	CPUC Discussion
<p>1. Energy Data Center</p> <p>A significant issue in this proceeding was whether the Commission should create an Energy Data Center (EDC) to make energy usage and usage-related data available to authorized entities. TURN had strongly opposed creation of an EDC arguing that rather than create a new bureaucracy the Commission should develop and impose standards on the utilities for the collection, management and effective dissemination of data. TURN also expressed concerns with any plans to have ratepayers pay for an EDC.</p> <p>The Commission agreed with TURN's reasoning and did not create an EDC, at least at this time. Instead, D.14-05-016 developed criteria as to who would be allowed access to energy data and the conditions for such access including requiring the utilities to standardize many of the elements involved in dealing with such data.</p>	<p>Comments of TURN (12/17/12), pp. 4-5.</p> <p>Reply Comments of TURN (1/7/13), pp. 2-4; re ratepayer funding, pp. 4-6.</p> <p>D.14-05-016, pp. 14; 2-4; FOF 21</p>	<p>Yes; <i>see</i> Decision (D.) 14-05-016 at 141.</p> <p>The reference to Finding of Fact (FOF) 21 is correct in that it is the first FOF that specifies the use of utility standards in lieu of an Energy Data Center.</p> <p>This position was taken by several other parties including ORA.</p>
<p>2. Privacy</p> <p>One of the main issues in this proceeding was developing rules to permit sharing customer energy data with appropriate entities while also protecting the privacy rights of those customers. Several</p>		<p>Yes, but FOF #28 was primarily argued by LGC as demonstrated by FOF #26.</p>

<p>parties advocated that making customer energy usage data available to them served more important policy interests than protecting customer privacy. These parties ran the gamut from university researchers to local governments to private enterprises such as Solar City. TURN urged the Commission to resist the urge to cede to these parties demands and that privacy should trump the other possible benefits in the absence of procedures to fully anonymize and aggregate customer information to ensure personally identifiable information (PII) is not revealed. TURN also argued that the certain entities had a justifiable interest in accessing usage data so long as appropriate safeguards are in place to ensure customer privacy. Thus, TURN supported release of anonymized and aggregated non-PII to local and other government agencies. TURN also supported a process to release usage data to appropriate university-affiliated research institutions subject to appropriate privacy safeguards.</p> <p>However, TURN was opposed to release of usage data to non-IOU entities for commercial purposes (e.g., for energy efficiency applications, for solar installations companies to identify prospective customers) arguing that such release required customer approval.</p> <p>In D.14-05-016, the</p>	<p>TURN Comments on Working Group Report (7/29/13), pp. 3-5.</p> <p>TURN Reply Comments on Working Group Report (8/5/13), p. 4.</p> <p>TURN Comments on Working Group Report (7/29/13), p. 5</p> <p>TURN Comments on Working Group Report (7/29/13), pp. 5-8.</p> <p>TURN Reply Comments on Working Group Report (8/5/13), pp. 1-5.</p>	
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<p>Commission considered 12 “use cases” identifying specific requests for energy usage data. The Commission ultimately approved the release of usage data, subject to certain protocols, to local government entities, university-affiliated researchers, and other government agencies consistent with TURN’s advocacy. The Commission did not approve release of usage data to commercial entities also consistent with TURN’s arguments.</p>	<p>D.14-05-016, FOFs 28, 40, 47, 58; COLs 8, 13.</p> <p>D.14-05-016, pp. 35, 43, 48, 73.</p> <p>D. 14-05-016, pp. 51,57, 68, 75, 79.</p>	
<p>3. NDA and Performance Bond</p> <p>PG&E proposed a model non-disclosure agreement (NDA) that could potentially be used by all entities granted access to usage data. While TURN generally supported using an NDA, we expressed concern that an NDA was insufficient to protect customers whose data was released by the entity signing the NDA and receiving the customer’s information. Thus, TURN argued that in addition to an NDA, the Commission should require these third parties receiving access to customer usage data to post a “performance bond.”</p> <p>In D.14-05-016 the Commission adopted a model NDA for specific application to researchers. In response to TURN’s concerns about the NDA and protecting consumers, the PD was revised to “make clear that researchers must follow the provisions of state and federal law that seek to protect the</p>	<p>TURN Comments on Working Group Report (7/29/13), p. 6.</p> <p>TURN Reply Comments on Working Group Report (8/5/13), p. 6.</p> <p>TURN Comments on PD (3/27/14), pp. 2-3.</p> <p>D.14-05-016, p. 105.</p> <p>D.14-05-016, p. 128.</p>	<p>Yes.</p>

<p>privacy of data involved in research”...and that researchers “must follow these requirements to the letter.” Although the Commission rejected TURN’s proposal for a performance bond, the Commission modified the NDA “to make clear who bears responsibility and liability for data breaches.”</p>		
<p>4. Cost Recovery</p> <p>Several times in this phase of the proceeding the IOUs argued that they must be able to recover “either in their revenue requirements or through user fees, the full reasonable incremental costs the utilities incur to implement the data access program, including start-up and ongoing costs as well as costs associated with any special requests for information or analyses not addressed by the energy data access program.”</p> <p>TURN argued that there was little evidence presented in this proceeding to even understand what “incremental” costs the utilities would incur especially given that the same utilities have been authorized cost recovery of substantial costs in both rate cases as well as smart meter deployment cases associated with usage data collection, processing and presentation. TURN urged the Commission to audit prior costs authorizations and spending before agreeing to allow any additional cost recovery related to data access.</p>	<p>Working Group Report, pp. 10, 63,66,88, 90, 91, 93, 94, 96.</p> <p>TURN Comments on Working Group Report (7/29/13), p. 2.</p>	<p>Yes, but this position was also argued by ORA. TURN should specify which aspects of the Commission’s decision is more consistent with its original position since there was a deviation.</p>

<p>The Commission noted that the utilities currently provide access to data to requesting parties “as part of normal operations.” Thus, “to a certain extent, these costs are currently recovered by the base revenue requirement set in a general rate case.” This is consistent with TURN’s advocacy. However, the Commission went on to say that it is “plausible” that the data access program may result in incremental costs. Thus the Commission authorized the utilities to book incremental costs to a memorandum account and “seek recovery through an adjustment to revenue requirements in their next general rate case or in an application to recover these costs.”</p> <p>While this outcome was not exactly what TURN proposed, it is consistent with TURN’s argument that the utilities should not just be given carte blanche to recover whatever “incremental” costs they assert. Whether cost recovery will be examined in a rate case or application, the Commission and parties will then have reasonable opportunity to examine the costs and opine as to their reasonableness consistent with TURN’s advocacy.</p>	<p>D.14-05-016, p. 105.</p> <p>D.14-05-016, pp. 114-115.</p> <p>D.14-05-016, p. 105.</p>	
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B. Duplication of Effort (§§ 1801.3(f) & 1802.5):

	Claimant	CPUC Verified
a. Was the Office of Ratepayer Advocates (ORA) a party to the proceeding?²	Yes	Verified
b. Were there other parties to the proceeding with positions similar to yours?	Yes	Verified
c. If so, provide name of other parties: Electronic Freedom Foundation (EFF)		Verified
d. Describe how you coordinated with ORA and other parties to avoid duplication or how your participation supplemented, complemented, or contributed to that of another party: TURN worked closely with both ORA and EFF. EFF was clearly the privacy expert in this proceeding and while TURN supported many of EFF's positions on specific privacy concerns, TURN raised issues and took positions that were incremental to EFF's approach (e.g., cost recovery; performance bond). ORA was active in this proceeding and TURN worked closely with ORA although, as with EFF, TURN and ORA did not make the same arguments. In both cases, TURN did not participate in the majority of use case meetings because TURN believed that we could not bring incremental value to those discussions. There was also value in TURN, ORA and EFF collaborating to represent consumers' privacy interests. The Commission should find that TURN's participation was efficiently coordinated with the participation of other intervenors wherever possible, so as to avoid undue duplication and to ensure that any such duplication served to supplement, complement, or contribute to the showing of the other intervenor.		We agree that TURN made a substantial contribution to D.14-05-016 but we cannot agree that the contribution was unique. We reduce TURN's hours by ~10% to account for duplication, as we discuss more fully below.

PART III: REASONABLENESS OF REQUESTED COMPENSATION**A. General Claim of Reasonableness (§§ 1801 & 1806):**

a. Intervenor's claim of cost reasonableness:	CPUC Discussion
While exceedingly difficult to quantify, this phase of the proceeding was extremely important to consumers who are concerned that their private information relating to energy usage would not be used by third parties unless stringent requirements were imposed on those seeking such access. TURN worked hard to ensure that only entities with valid interests would be permitted access to sensitive data. Thus TURN supported access by governmental agencies	Verified.

² The Division of Ratepayer Advocates was renamed the Office of Ratepayer Advocates effective September 26, 2013, pursuant to Senate Bill No. 96 (Budget Act of 2013: public resources), which was approved by the Governor on September 26, 2013.

<p>and academic researchers. At the same time, TURN opposed allowing commercial entities access without requiring customer consent. TURN's efforts assisted the Commission in developing an approach to data access that balanced the competing interests of government and academia against the valid privacy interests of consumers. The Commission should therefore conclude that TURN's overall request is reasonable in light of the substantial benefits to California ratepayers that were directly attributable to TURN's participation in the case.</p>	
<p>b. Reasonableness of Hours Claimed.</p> <p>William Nusbaum was TURN's only participant in this phase of the proceeding. The total hours included in this request represent only two and one-half 40-hour weeks of attorney time, which included participation in workshops and one working group meeting. The issues being considered by the Commission were very complex, contentious and significant to parties and consumers. The Commission should find TURN's request for intervenor compensation to be reasonable.</p>	<p>The general allocation of hours is reasonable. However, despite best efforts there are some areas where there is overlap with other parties, including ORA and EFF.</p>
<p>c. Allocation of Hours by Issue</p> <p>The following codes relate to specific substantive issue and activity areas addressed by TURN:</p> <p>GP - General Preparation: time for activities necessary to participate in the Docket.</p> <p>P – Issues associated with privacy including the current state of CA privacy laws, what protections should be afforded consumers relating to their energy usage data, and the use cases considered by the parties and the Commission. Also includes issues associated with an NDA.</p> <p>E – Issues associated with consideration of an Energy Data Center</p> <p>W – Issues associated with workshops and working groups including participation in such groups.</p> <p>C – Issues associated with cost recovery by utilities of costs related to a data access process.</p> <p>COMP - Preparation of compensation request.</p> <p># - Where time entries cannot easily be identified with a specific activity code. For these entries, the allocation of time spent on activities can be broken down as such:</p> <p>E 15%, P 70%, C 15%</p>	

B. Specific Claim:*

CLAIMED						CPUC AWARD		
ATTORNEY, EXPERT, AND ADVOCATE FEES								
Item	Year	Hours	Rate \$	Basis for Rate*	Total \$	Hours	Rate \$	Total \$
William Nusbaum	2012	10.25	\$445	D.13-03-024	\$4,561.25	9	\$445	\$4,005.00
William Nusbaum	2013	78	\$455	D.13-10-065	\$35,490.00	70	\$455	\$31,850.00
William Nusbaum	2014	15.25	\$455	Res. ALJ 287 AND D.14-08-052	\$6,938.75	14	\$455	\$6,370.00
Subtotal: \$46,990.00						Subtotal: \$42,225.00		
INTERVENOR COMPENSATION CLAIM PREPARATION **								
Item	Year	Hours	Rate \$	Basis for Rate*	Total \$	Hours	Rate	Total \$
William Nusbaum	2014	8	\$227.50	Res. ALJ 287 (Half of approved hourly rate	\$1,820.00	8	\$227.50	\$1,820.00
Subtotal: \$1,820.00						Subtotal: \$1,820.00		
COSTS								
#	Item	Detail			Amount	Amount		
	Photocopies				\$14.00	\$14.00		
	Postage				\$18.46	\$18.46		
Subtotal: \$32.46						Subtotal: \$32.46		
TOTAL REQUEST: \$48,842.46						TOTAL AWARD: \$44,077.46		
<p>**We remind all intervenors that Commission staff may audit their records related to the award and that intervenors must make and retain adequate accounting and other documentation to support all claims for intervenor compensation. Intervenor’s records should identify specific issues for which it seeks compensation, the actual time spent by each employee or consultant, the applicable hourly rates, fees paid to consultants and any other costs for which compensation was claimed. The records pertaining to an award of compensation shall be retained for at least three years from the date of the final decision making the award.</p> <p>**Travel and Reasonable Claim preparation time typically compensated at ½ of preparer’s normal hourly rate</p>								

ATTORNEY INFORMATION			
Attorney	Date Admitted to CA BAR ³	Member Number	Actions Affecting Eligibility (Yes/No?) If "Yes", attach explanation
William Nusbaum	June 7, 1983	108835	No; please note from January 1, 1997 until October 4, 2002 Nusbaum was an inactive member of the California State Bar.

C. Attachments Documenting Specific Claim and Comments on Part III:

Attachment or Comment #	Description/Comment
1.	Certificate of Service
2.	Time Sheets for Attorney
3.	Expenses
4.	TURN hours allocated by issue

D. CPUC Disallowances and Adjustments:

Item	Reason
1. Disallowance for duplication of efforts	<p>Although TURN substantially contributed to D.14-05-016, many of the contributions were similar to the other parties' in this proceeding. ORA and EFF provided similar recommendations to TURN, as such we decrease the award by approximately 10% for duplication of efforts:</p> <ul style="list-style-type: none"> • For duplication of efforts in 2012, we reduce TURN's hours by 1.25 hours • For duplication of efforts in 2013, we reduce TURN's hours by 8 hours • For duplication of efforts in 2014, we reduce TURN's hours by 1.25 hours. <p>TOTAL disallowance of time for duplication of efforts, 10.5 hours</p>

³ This information may be obtained at: <http://www.calbar.ca.gov>.

PART IV: OPPOSITIONS AND COMMENTS

A. Opposition: Did any party oppose the Claim?	No
B. Comment Period: Was the 30-day comment period waived (<i>see</i> Rule 14.6(2)(6))?	Yes

FINDINGS OF FACT

1. The Utility Reform Network has made a substantial contribution to Decision 14-05-016.
2. The requested hourly rates for The Utility Reform Network's representatives, as adjusted herein, are comparable to market rates paid to experts and advocates having comparable training and experience and offering similar services.
3. The claimed costs and expenses, as adjusted herein, are reasonable and commensurate with the work performed.
4. The total of reasonable compensation is \$44,077.46.

CONCLUSION OF LAW

1. The Claim, with any adjustment set forth above, satisfies all requirements of Pub. Util. Code §§ 1801-1812.

ORDER

1. The Utility Reform Network is awarded \$44,077.46.
2. Within 30 days of the effective date of this decision, Pacific Gas and Electric Company, Southern California Electric Company, and San Diego Gas & Electric Company shall pay The Utility Reform Network their respective shares of the award, based on their California-jurisdictional electric and gas revenues for the 2013 calendar year, to reflect the year in which the proceeding was primarily litigated. Payment of the award shall include compound interest at the rate earned on prime, three-month non-financial commercial paper as reported in Federal Reserve Statistical Release H.15, beginning September 8, 2014, the 75th day after the filing of The Utility Reform Network's request, and continuing until full payment is made.

3. The comment period for today's decision is waived.
4. This decision is effective today.

Dated April 9, 2015, at San Francisco, California.

MICHAEL PICKER

President

MICHEL PETER FLORIO

CATHERINE J.K. SANDOVAL

CARLA J. PETERMAN

LIANE M. RANDOLPH

Commissioners

APPENDIX**Compensation Decision Summary Information**

Compensation Decision:	D1504015	Modifies Decision?	
Contribution Decision(s):	D1405016		
Proceeding(s):	R0812009		
Author:	ALJ Division		
Payer(s):	Pacific Gas and Electric Company, Southern California Electric Company, and San Diego Gas & Electric Company		

Intervenor Information

Intervenor	Claim Date	Amount Requested	Amount Awarded	Multiplier?	Reason Change/Disallowance
The Utility Reform Network	6/25/2014	\$48,842.46	\$44,077.46	N/A	Disallowance for duplication of efforts.

Advocate Information

First Name	Last Name	Type	Intervenor	Hourly Fee Requested	Year Hourly Fee Requested	Hourly Fee Adopted
William	Nusbaum	Attorney	TURN	\$445	2012	\$445
William	Nusbaum	Attorney	TURN	\$455	2013	\$455
William	Nusbaum	Attorney	TURN	\$455	2014	\$455

(END OF APPENDIX)